IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1234 of 1988

For Approval and Signature:

Hon'ble ACTING CHIEF JUSTICE MR.JN BHATT
and
Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ISMAILBHAI HAJI FATEBHAI TAI

Versus

RAISINGBHAI NARANBHAI BARIA

Appearance:
1. First Appeal No. 1234 of 1988
MR MTM HAKIM for Petitioner No. 1
NOTICE SERVED for Respondent No. 1-2
MR RR MARSHALL for Respondent No. 3

CORAM : ACTING CHIEF JUSTICE MR.JN BHATT
and
MR.JUSTICE A.L.DAVE

Date of decision: 26/06/2003

ORAL JUDGEMENT

(Per : ACTING CHIEF JUSTICE MR.JN BHATT)

In this appeal under Section 110-D of the Motor Vehicles Act, the challenge is about the quantum of compensation awarded to a living victim of serious road accident. The Tribunal, upon consideration of facts and circumstances and examination of the evidence, has awarded only Rs. 64,500/- with interest at the rate of 12% per annum from the date of application, till payment to the appellant - original claimant, who is 13 years old minor and who had sustained serious injuries resulting into amputation of right leg above knee, against the claim of Rs. 2 lakhs which was claimed by way of compensation by the guardian of the minor Iqbal by filing MACP No.551 of 1984 before MACT (Auxiliary), Panchmahal at Godhra for the injuries and resultant amputation sustained by the minor out of a road accident which occurred on 9.5.1983.

2. In this enhancement of compensation appeal, the submission is that the amount under the head of pain, shock and suffering and the prospective loss of income of the victim of road accident have not been seriously considered and rightly taken into account, resulting into loss of substantial amount in assessment of compensation. It is contended that under the head of pain, shock and suffering an amount of only Rs. 25,000/- is awarded, whereas in similar matter higher amount was awarded. It is further contended that otherwise also looking to the age and permanent disablement of amputation of right leg above knee, the claimant should be entitled to an amount of atleast Rs. 35,000/- and therefore, Rs. 10,000/-- more should be awarded under the head of pain shock and suffering. In so far as prospective income of the victim, it is submitted that the same is also required to be revised considering the income of Rs. 250/- per month instead of Rs. 175/- per month adopted by the Tribunal and thus, an additional amount of Rs. 13,500/- would work out under this head.

3. We have dispassionately heard the learned Advocate for the appellant. We have also scrutinised and examined the testimony collections and documentary evidence in support of the claim made by the appellant for enhancement of the compensation and we feel that additional aggregate amount of Rs. 23,500/- under both the heads should be awarded to the original claimant - appellant before us, with the same rate of interest and proportionate cost thereof.

4. In the result, the appeal is partly allowed. The impugned judgement and award, whereby an amount of Rs. 64,500/- was awarded by the Tribunal is modified. Additional amount of Rs. 23,500/- with the same rate of interest shall be added and therefore the opponents shall be liable, jointly and severally, for the payment of additional amount also with same rate of interest and proportionate cost. Award be drawn accordingly.

(J.N.Bhatt, Acting C.J.) (A.L.Dave, J.)

*/Mohandas